



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MB Docket No. 18-119; FCC 18-60]

FM Translator Interference

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission discusses several proposals designed to streamline the rules relating to interference caused by FM translators and expedite the translator complaint resolution process, based in part upon the petitions for rulemaking filed by the National Association of Broadcasters and Aztec Capital Partners, Inc.

DATES: Comments may be filed on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments may be filed on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by MB Docket No. 18-119, by any of the following methods:

- Federal Communications Commission's Website: [http:// www.fcc.gov/cgb/ecfs/](http://www.fcc.gov/cgb/ecfs/).
Follow the instructions for submitting comments.

- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Chief, Media Bureau, Audio Division, (202) 418-2721; Christine Goepp, Media Bureau, Audio Division, (202) 418-7834. Direct press inquiries to Janice Wise at (202) 418-8165. For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202-418-2918, or via the Internet at Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, MB Docket No. 18-119, FCC 18-60, adopted and released May 10, 2018. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at http://fjallfoss.fcc.gov/edocs_public/ or via the FCC's Electronic Comment Filing System (ECFS) website at <http://fjallfoss.fcc.gov/ecfs2/>. (Documents will be available

electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (braille, large print, electronic files, audio format), by sending an e-mail to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

The Notice of Proposed Rulemaking (NPRM) contains proposed information collection requirements subject to the PRA, Public Law 104-13. OMB, the general public, and other Federal agencies are invited to comment on the proposed new and modified information collection requirements contained in this NPRM.

Comments on the proposed information collection requirements should address:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act comments on the information collection requirements contained herein should be submitted to Cathy Williams, via the Internet to Cathy.Williams@fcc.gov, and to Nicholas A. Fraser, Office of Management and Budget (OMB), via the Internet to Nicholas_A._Fraser@omb.eop.gov.

To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

The proposed information collections are as follows:

OMB Control Number: 3060-xxxx.

Title: Sections 74.1203(a)(3), Interference, and 74.1204(f), Protection of FM broadcast, FM

Translator and LP100 stations.

Type of Review: New collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 270 respondents; 270 responses.

Estimated Time per Response: 3 - 5 hours.

Frequency of Response: Third party disclosure requirement and on occasion reporting requirement.

Total Annual Burden: 1,080 hours.

Total Annual Cost: \$924,100.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On May 10, 2018, the Commission adopted a Notice of Proposed Rulemaking, Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference, FCC 18-60, MB Docket No. 18-119, proposing to streamline the rules relating to interference caused by FM translators and expedite the translator interference complaint resolution process. The proposals, if implemented, could limit or avoid protracted and contentious interference resolution disputes, provide translator licensees both additional flexibility to remediate interference and additional investment certainty, and allow expedited resolution of interference claims by affected stations.

The rule changes proposed in the NPRM would, if adopted, potentially increase the number of listener complaints that must be included with an interference claim to a minimum of six, and increase the amount of information to be included with each listener complaint to include signed listener statements regarding listening regularity and non-affiliation with the complaining station. In the NPRM, the Commission is seeking comment on its proposal to specify and clarify the information that must be contained in each listener interference complaint, thus potentially reducing lengthy and resource-intensive disputes over a listener's bona fides. To discourage the filing of poorly substantiated claims, the Commission is proposing to require that a minimum number of listener complaints be submitted with each translator interference claim and that listener complaints beyond a certain contour would not be actionable. Finally, the Commission is seeking comment on streamlining the interference resolution process by applying technical data, rather than relying on listener involvement, to demonstrate resolution of properly documented, bona fide listener complaints. Under this new information collection, the following information collection requirements require OMB approval.

The Commission proposes to amend §§ 74.1203(a)(3) (actual interference) and 74.1204(f) (predicted interference) of the rules to state that interference will be considered to occur whenever reception of a regularly used signal by six or more listeners, at separate locations using separate receivers, is impaired or is predicted to be impaired, by the signals radiated by the FM translator station.

The Commission also proposes to codify the § 74.1203(a)(3) and 74.1204(f) listener complaint requirements in § 74.1201(k). All listener complaints, whether

submitted under § 74.1203(a)(3) or § 74.1204(f), must be signed by the listener and contain the following: (1) full name and contact information; (2) a clear, concise, and accurate description of the location where the interference is alleged to occur; (3) to demonstrate that the complainant is a regular listener, a statement that the complainant listens to the desired station at least twice a month; and (4) to demonstrate that the complainant is disinterested, a statement that the complainant has no legal, financial, or familial affiliation with the desired station. In addition, stations submitting a translator interference claim pursuant to either § 74.1203(a)(3) or § 74.1204(f) must include a map plotting specific listener addresses in relation to the relevant station contours. Section 74.1204(f) complaints must also provide technical evidence of interference to the reception of the desired station at the listener locations specified, such as through U/D signal strength data.

Finally, in order to simplify and expedite the interference resolution process, the NPRM proposes to require that the FM translator operator, once interference has been initially established through bona fide listener complaints under either § 74.1203(a)(3) or § 74.1204(f), submit a technical showing that all interference has been eliminated. The NPRM proposes to require that this technical showing be based on the same U/D ratio methodology applicable to § 74.1204(f) complaints described above, in addition to on/off tests, if appropriate, and as directed by Commission staff.

OMB Control Number: 3060-0405.

Title: Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, FCC Form 349.

Form Number: FCC Form 349.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents and Responses: 1,350 respondents; 2,700 responses.

Estimated Time per Response: 1 - 1.5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 5,050 hours.

Total Annual Cost: \$5,291,550.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Needs and Uses: FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations.

Form 349 also contains a third-party disclosure requirement, pursuant to 47 CFR 73.3580. This rule requires stations applying for a new broadcast station, or to make major changes to an existing station, to give local public notice of this filing in a newspaper of general circulation in the community in which the station is located. This local public notice must be completed within 30 days of the tendering of the application.

This notice must be published at least twice a week for two consecutive weeks in a three-week period. In addition, a copy of this notice must be placed in the station's public inspection file along with the application, pursuant to 47 CFR 73.3527. This recordkeeping information collection requirement is contained in OMB Control No. 3060-0214, which covers § 73.3527.

On May 10, 2018, the Commission adopted a Notice of Proposed Rulemaking, Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference, FCC 18-60, MB Docket No. 18-119, proposing to streamline the rules relating to interference caused by FM translators, and expedite the translator interference complaint resolution process. The proposals, if implemented, could limit or avoid protracted and contentious interference resolution disputes, provide translator licensees both additional flexibility to remediate interference and additional investment certainty, and allow earlier and expedited resolution of interference complaints by affected stations.

In the NPRM, the Commission seeks comment on its proposal to offer additional flexibility to translator licensees, by allowing them to resolve interference issues using the effective and low-cost method of submitting a minor modification application to change frequency to any available FM channel. This method could potentially reduce the need for pleadings to be filed at a later stage to prosecute or defend an interference claim.

Specifically, the NPRM pertains to this Information Collection as it proposes to modify § 74.1233(a)(1) of the rules to define an FM translator station's change to any available FM channel as a minor change, filed using FCC Form 349, upon a showing of actual interference to or from any other broadcast station. Currently, if an existing FM translator causes actual interference as prohibited by § 74.1203(a), it is limited to

remedial channel changes, filing FCC Form 349 as a minor change application, to first, second, or third adjacent, or IF channels. A change to any other channel is considered a major change on FCC Form 349, which currently may only be submitted during a filing window. The NPRM, if adopted, will enable more translator stations to cure interference by simply changing channels by filing Form 349 as a minor change application, rather than other costlier and less efficient remedies.

With this submission, the Commission is currently seeking to obtain OMB approval for the proposed revision to § 74.1233(a)(1) of the rules. This revision will modify the number of respondents, number of responses, annual burden hours, and annual costs for this collection.

Synopsis of Notice of Proposed Rule Making

INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), the Commission proposes to streamline the rules relating to interference caused by FM translators and expedite the translator complaint resolution process, based in part upon the petitions for rulemaking filed by the National Association of Broadcasters (NAB) (NAB Petition) and Aztec Capital Partners, Inc. (Aztec) (Aztec Petition). Specifically, the Commission seeks comment on: (1) allowing FM translators to resolve interference issues by changing channels to any available frequency using a minor modification application; (2) requiring a minimum number of listener complaints to be submitted with any FM translator interference claim; (3) standardizing the information that must be included within such a listener complaint; (4) streamlining and expediting interference complaint resolution procedures; (5) establishing an outer contour limit for the affected station beyond which

listener complaints would not be considered actionable; and (6) modifying the scope of interference complaints permitted to be filed by affected stations at the application stage. The Commission's proposals also apply to booster stations, although we note that, as booster stations are limited in operation to the same channel as their primary station, the proposal to allow non-adjacent frequency changes by minor change application will not be available to booster stations. These proposals could, if implemented, limit or avoid protracted and contentious interference resolution disputes, provide translator licensees both additional flexibility to remediate interference and additional investment certainty, and allow earlier and expedited resolution of interference complaints by affected stations.

2. Recent substantial growth in the translator service, as well as the economic importance of translators for AM station viability, has led to increased industry interest in clarifying and streamlining the translator interference rules to create greater investment certainty and avoid protracted and expensive interference resolution disputes. As a secondary service, FM translators must not cause either predicted or actual interference to any authorized broadcast station. If interference is demonstrated, the translator must resolve the issue or cease operation. The Commission distinguishes between predicted interference, which is determined at the time a construction permit application is processed, and actual interference, which is determined after a translator station has begun operation. Under 47 CFR 74.1203(a), a translator is prohibited from causing actual interference to the direct reception by the public of the off-the-air signals of any authorized broadcast station at any time after the translator commences operation. Although listeners are permitted to submit interference complaints directly to the Commission, it is much more common for the affected station to submit a claim of actual

interference to the Commission based on complaints obtained from its listeners. Under 47 CFR 74.1204(f), an application will not be granted if an objector provides convincing evidence that the predicted 60 dB μ contour of the translator would overlap a populated area already receiving a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station and grant of the authorization will result in interference to the reception of such signal.

3. **Channel changes.** If the Commission receives a valid interference complaint, the translator licensee must either eliminate the interference using “suitable techniques” or suspend operations. Changing channels is often the preferred solution, because it allows translators to quickly resolve interference at minimal cost and with little or any reduction in service area. However, this option is currently limited by 47 CFR 74.1233(a)(1), which restricts translator modifications that can be carried out using a minor change application to: (1) channel changes to first, second, or third adjacent channels, or intermediate frequency channels; and (2) changes in antenna location where the translator station would continue to provide 60 dB μ service to some portion of its previously authorized 60 dB μ service area. Changes that do not qualify as minor may only be submitted during a filing window. In the NPRM, the Commission proposes to define an FM translator’s change to any same-band available FM channel as a minor change upon a showing of interference to or from any other broadcast station. It anticipates that this measure would facilitate interference resolution, avoid time- and resource-consuming conflicts, and, in some cases, prevent translator stations from being forced to suspend operations. The Commission seeks comment on this proposal, and on

whether to impose any minimum technical requirements on such showings, e.g., an engineering statement.

4. The Commission also seeks comment on limiting this flexibility to modification applications seeking channels within the same FM band (i.e., the reserved or non-reserved FM bands). Specifically, it proposes to modify § 74.1233(a)(1) to define any channel change for a translator from a non-reserved band frequency to a reserved band frequency, or vice versa, as a major change. Currently, this prohibition is limited to unbuilt stations. With the increased channel change activity that it anticipates will be generated by this proposal, as well as the overall growth of the FM translator service, the Commission believes that this measure is necessary to preserve the integrity of the filing window system.

5. **Minimum number of listener complaints.** The existing interference resolution process consists of Commission staff mediating interference disputes based upon as little as one listener complaint of interference. In the NPRM, the Commission proposes to require a minimum number of listener complaints to be submitted in support of any claim of translator interference. NAB suggests six listener complaints as a “reasonable starting point,” based on consultation with various industry stakeholders. This measure, NAB claims, would help avoid disputes over whether a claim supported by only one or two listeners has been adequately substantiated. A number of commenters suggested a higher required minimum number of listener complaints, such as ten, or a variable system based on the size of the market or population affected. The Commission seeks comment on whether six complaints is a reasonable threshold of listener complaints, noting that six listener complaints are required in the context of a digital FM

signal causing interference to an analog station. Should the Commission vary this figure based on the population of the area affected, the total population served by the complaining station, or any other potential denominator, or would a single number work in most situations? Would it be administratively feasible to vary the figure in this way? Should the Commission apply this minimum complaint requirement in both predicted and actual interference contexts? If so, should the same minimum number apply to each rule section? The Commission proposes to apply this requirement to both translators and boosters and seeks comment on this proposal. Are there reasons to distinguish between translator and booster stations in this context? Is there a need to establish a maximum time period within which the required number of complaints must be obtained by the affected station and/or received by the Commission? Although most interference claims are submitted by the affected station, the Commission also seeks comment on appropriate procedures for handling complaints received directly from listeners. Should the Commission forward such complaints to the affected station licensee?

6. The Commission tentatively concludes that six represents a reasonable minimum of listener complaints that will address the concern that interference complaints may be inadequately substantiated without imposing too heavy an evidentiary burden on the complaining station. Therefore, the Commission proposes to amend §§ 74.1204(f) and 74.1203(a)(3) to state that interference will be considered to occur whenever reception of a regularly used signal by six or more listeners, at separate locations using separate receivers, is impaired or is predicted to be impaired by the signals radiated by the FM translator station. The Commission seeks comment on this proposal. Although the Commission proposes a minimum number of listener complaints, it tentatively

concludes that it will not adopt NAB's proposal that the Commission require a showing of interference at a sufficient number of locations within the affected area to demonstrate "a real and consistent interference problem." This proposal would have the Commission overlook or undervalue multiple listener complaints from the same approximate location, such as an apartment building, and is thus in tension with the Commission's focus on "reception by the public" in § 74.1203(a)(3) and prevention of interference to "populated areas" in § 74.1204(f). The Commission seeks comment on this conclusion.

7. **Complaint requirements and remediation procedures.** In the NPRM, the Commission observes that the interference resolution process is often delayed or sidetracked by disputes over the validity of the claimed interference, the objectivity of complaining listeners, or procrastination by one of the parties. Addressing these matters can be time-consuming for Commission staff and detrimental to one or both parties. Moreover, seemingly similar cases can vary in the time, effort, and expense needed to resolve them, leading to a perception of an ad hoc process with inconsistent outcomes. Although the Commission requires that listener complainants regularly listen to the affected station and be disinterested in the affected station, it currently does not require upfront listener certifications to this effect. Rather, listener bona fides are contested after the interference claim is submitted to the Commission.

8. The Commission seeks comment on mandating that all listener complaints, whether submitted under 47 CFR 74.1203(a)(3) or 74.1204(f), must be signed by the listener and contain the following: (1) full name and contact information; (2) a clear, concise, and accurate description of the location where the interference is alleged to occur; (3) to demonstrate that the complainant is a regular listener, a statement

that the complainant listens to the desired station at least twice a month; and (4) to demonstrate that the complainant is disinterested, a statement that the complainant has no legal, financial, or familial affiliation with the desired station. In addition, stations submitting a translator interference claim pursuant to either 47 CFR 74.1203(a)(3) or 74.1204(f) must include a map plotting specific listener addresses in relation to the relevant station contours. This proposal would not affect the existing 47 CFR 74.1204(f) requirement to provide technical evidence of interference to the reception of the desired station at the listener locations specified, such as through U/D signal strength data.

9. The Commission seeks comment on whether these strengthened upfront listener complaint requirements would significantly reduce challenges to a listener's bona fides and hence simplify and streamline translator interference proceedings. The Commission also proposes to clarify that listener complaints solicited by the station and/or presented in a standardized format, such as a list or form letter, will not be taken as evidence that a listener is impermissibly affiliated with the complaining station. Similarly, it proposes to clarify that social media connections, such as friending or following a station or its personnel on Facebook, Twitter, or other social media platforms, between listeners and the complaining station or its personnel will not be taken as evidence that a listener is impermissibly affiliated with the complaining station, because such a connection does not amount to a legal, economic, or familial interest in the station. The Commission seeks comment on these proposals.

10. The Commission also proposes that a listener complaint that meets the above content requirements will presumptively establish interference at the relevant location, which must then be promptly eliminated by the translator operator using any

suitable technique—including, as appropriate, a modification application to change channels as proposed herein—or, if necessary, suspending operations. The Commission anticipates that the more formal and detailed complaint format proposed herein will reduce the need for staff involvement in disputes over the validity of complaints. Moreover, the Commission believes that the U/D signal ratio test procedure outlined below will minimize the need for staff involvement in the interference resolution process beyond: (1) confirming the sufficiency of listener complaints submitted formally to the Commission; (2) notifying the relevant translator of such complaints and any applicable deadline for resolution; and (3) reviewing any technical showings purporting to establish that all interference has been resolved. The Commission also proposes to clarify that a listener whose complaint is sent to a station and then submitted as part of an interference claim or other request for relief filed by an affected station licensee is not entitled to protection under the ex parte rules because the listener has not submitted a filing with the Commission. Therefore, listener complainants are not parties to any proceeding that may be initiated by a complaint or other request for relief filed by a station licensee and are not entitled to protection under the ex parte rules. However, as before, a station licensee filing an interference claim or other request for relief is considered a party to the proceeding and entitled to protection under the ex parte rules. The Commission seeks comment on these proposals.

11. The Commission proposes to eliminate the current requirement that the complaining listener cooperate with remediation efforts. For example, a listener would not be required to accept equipment or equipment modifications (e.g., a new receiver) as a way of addressing interference. Instead, the Commission seeks comment on removing

the listener from the complaint resolution process by requiring the translator operator, once interference has been initially established through listener complaints, to submit a technical showing that all interference has been eliminated. The Commission proposes to require this technical showing to be based on the same U/D ratio methodology applicable to 47 CFR 74.1204(f) complaints, using the standard contour prediction methodology specified in 47 CFR 73.313, in addition to on/off tests if appropriate and directed by Commission staff. A translator licensee could use these U/D showings to demonstrate the parameters with which it could operate on its current frequency and not cause interference. The Commission seeks comment on this proposal to simplify and expedite interference resolution. Will the U/D showings, in conjunction with the standard contour prediction methodology, be sufficient to make these determinations accurately in the majority of interference scenarios? The Commission notes that a number of commenters questioned the reliability of listeners' assessment of interference. Should the Commission rely exclusively on technical U/D showings as proposed, or continue to involve the listener if the listener alleges that he or she subjectively continues to experience interference despite U/D showings to the contrary? If on/off tests are included as part of the remediation process, what technical standards or procedures, if any, should be required regarding location, timing, receivers, etc.? Should the Commission require the use of specific receivers, or types of receivers, to promote consistent on/off test results? Would this proposal reduce or eliminate unproductive or unpleasant interactions between translator operators and complaining listeners? Finally, the Commission seeks comment on establishing an appropriate deadline for translators to resolve all properly substantiated interference complaints and submit an acceptable

technical showing or be subject to suspension of operation. In addition to imposing a deadline on translators to resolve interference, are there other measures the Commission could take to expedite the interference resolution process? The Commission seeks comment on NAB's suggestion that it establish Commission deadlines for acting on interference complaints. Is this necessary should the Commission adopt deadlines on translators to resolve complaints? How should the Commission balance this work against its other competing priorities affecting radio broadcasters?

12. Limit on actual interference complaints. The Commission seeks comment on identifying a signal strength beyond which an FM station may not claim interference to its listeners from an FM translator. This proposal addresses a concern raised by Aztec and other commenters that the current rules encourage competitor licensees to file minimally substantiated claims against distant translators.

13. The Commission expresses reservations about two aspects of Aztec's proposal. First, the Commission believes that Aztec's proposal to prohibit translator interference only within the 60 dBμ contour of other stations would be inconsistent with translators' role as a secondary service, fundamentally changing the existing balance of equities between translators and other broadcast stations and affect the listening options for listeners outside the other broadcast station's protected contour. Second, the Commission tentatively concludes that it would not be advisable or administratively feasible to distinguish between fill-in and other area translators in this context, because it is a relatively simple matter for a translator licensee to change primary stations and hence change the fill-in status and protection obligations of the translator station. The Commission declines to assume that a fill-in translator presumptively provides "local"

service or, conversely, that a complaining station is “distant” based merely on the distance between its transmitter site and certain of its listeners, particularly commuters. These terms may refer as much to programming content as to the proximity of the transmitter site. While the Commission’s translator policy is intended to promote overall program diversity, it does not otherwise assess the value of content—again, taking into consideration the ease with which programming can be changed. For these reasons, the Commission does not seek comment on Aztec’s suggestion to differentiate between fill-in and other area translators for interference protection purposes. However, the Commission seeks comment on possible alternative ways to address Aztec’s underlying concerns.

14. The Commission proposes to identify a predicted signal contour within which most of a station’s listeners are located and to not require the elimination of interference beyond that contour. The Commission believes that it can thus restrict stations from making specious interference allegations while preserving translators’ status as a secondary service. This approach is similar to that used in the LPFM service and is based on the common language of §§ 74.1203(a)(3) and 74.1204(f), which prohibit interference to a “regularly used” broadcast signal, and § 74.1203(a)(3), which prohibits interference with another station’s “reception by the public.” These provisions assume the existence of a signal capable of being regularly received by the public and therefore should not permit complaints regarding a signal that is not so received. Thus, the Commission concludes that this proposal is consistent with the secondary nature of translators. In this respect, it notes that the 60 dB μ contour standard is by no means an outer limit of listenability. Rather, this contour has been principally used as an

allocations tool, which reflects a balance between providing adequate service areas and permitting a sufficient number of FM assignments.

15. For these reasons, the Commission proposes to modify 47 CFR 74.1203(a)(3) to state that no complaint of actual interference will be considered actionable if the alleged interference occurs outside the desired station's 54 dB μ contour. Would this contour limit achieve the goal of safeguarding the technical integrity of the FM band? Should there be different outer limits for interference complaints for FM stations in different Zones? The Commission tentatively concludes that the greater contour protections afforded to Class B and Class B1 in the non-reserved band are based on allocations concerns regarding populous service areas and thus do not affect this analysis or warrant separate treatment for Class B and Class B1 stations in this respect. The Commission seeks comment on this conclusion.

16. Observing that the actual interference provisions of 47 CFR 74.1203(a)(3) and 74.1203(b) have given rise to some of the most lengthy and contentious proceedings—as well as to allegations of negative interactions between translator operators and complaining listeners—the Commission proposes to reduce reliance on actual interference complaints by harmonizing the scope of complaints that can be preemptively brought under 47 CFR 74.1204(f) with those that are based on allegations of actual interference. Specifically, it seeks comment on amending 47 CFR 74.1204(f) to allow an objector to submit evidence of bona fide listeners that are within the complaining station's predicted 54 dB μ contour rather than, as currently, the relevant translator's "predicted 1 mV/v (60 dB μ) contour." By modifying the scope of predicted interference claims to more closely reflect post-grant actual interference requirements,

the Commission anticipates that more potential conflicts can be resolved before applicants are fully invested in the proposed facility and may have greater flexibility in pursuing remedial steps. The Commission seeks comment on whether this proposal would encourage translator applicants and their engineers to propose facilities that are more viable in the long term. It tentatively concludes that the proposal is consistent with section 5(3) of the Local Community Radio Act of 2010 (LCRA), which states that the Commission must, when licensing new FM translator stations, ensure that they remain secondary to existing and modified full service FM stations. The proposal to modify the existing limitation in § 74.1204(f) will expand the geographic scope of potential interference complaints against translators by full service stations in most cases. In addition, as discussed above, this proposal is consistent with the secondary nature of translators. The Commission seeks comment on this conclusion.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities of the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rule Changes

18. In this NPRM, the Commission seeks comment on whether to modify certain standards and procedures relating to FM translator interference complaints. Specifically, the Commission seeks comment on the following proposals: (1) allowing translators to resolve interference issues by changing channels to any available FM frequency using a minor modification application; (2) requiring a minimum number of listener complaints to be submitted with any FM translator interference claim; (3) clarifying the information that must be included within a listener complaint; (4) establishing an outer contour limit for the affected station beyond which listener complaints would not be actionable; (5) modifying the scope of interference complaints permitted to be filed by affected stations at the application stage; and (6) streamlining and expediting interference complaint resolution procedure. These proposals could, if implemented, avoid protracted and contentious interference resolution disputes, provide translator licensees additional flexibility to remediate interference, provide translator licensees with additional investment certainty, and allow earlier and expedited resolution of interference complaints by affected stations.

Legal Basis

19. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

20. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if

adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

21. Radio Stations. This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.” The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more. Therefore, based on the SBA’s size standard, the majority of such entities are small entities.

22. According to BIA/Kelsey Publications, Inc.’s Media Access Pro Database, on March 30, 2018, 10,859 (or about 99.94 percent) of the then total number of FM radio stations (10,865); 4,629 (or about 99.94 percent) of the then total number of AM radio stations (4,632); and all of the 7,238 total FM translator stations (100 percent) had revenues of \$38.5 million or less for the year ending 2017, and thus qualify as small

entities under the SBA definition. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. This estimate, therefore, likely overstates the number of small entities that might be affected, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

23. As noted above, an element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

24. The rule changes proposed in the NPRM would, if adopted, potentially increase the number of listener complaints that must be included with an interference claim to a minimum of six and increase the amount of information to be included with each listener complaint to include signed listener statements regarding listening regularity and disinterestedness in the complaining station. However, licensees are encouraged to resolve interference complaints privately and the recourse of filing an interference claim

with the Commission is purely voluntary. Moreover, the type of information to be filed (i.e., information required to be included with listener complaints) is already familiar to broadcasters, so the additional paperwork burdens would be minimal.

Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered

25. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

26. In the NPRM, the Commission seeks comment on its proposal to offer additional flexibility to translator licensees, including small entities, by allowing them to resolve interference issues using the effective and low-cost method of submitting a minor modification application to change frequency to any available FM channel. We also propose to clarify the information that must be contained in each listener interference complaint, thus potentially reducing lengthy and resource-intensive disputes over listener bona fides. The Commission does not anticipate that the proposed certifications would add much, if any, time needed to collect each listener complaint. These requirements could also potentially reduce the need for pleadings to be filed at a later stage to prosecute or defend an interference claim. To discourage the filing of poorly

substantiated interference claims, we propose to require that a minimum number of listener complaints be submitted with each FM translator interference and that listener complaints beyond a certain contour would not be considered actionable. Finally, the Commission seeks comment on streamlining the FM translator interference resolution process by relying on technical data rather than requiring listener involvement with the resolution process after prima facie interference has been established by a minimum number of properly documented listener complaints. We anticipate that these proposals will facilitate a consistent and fair interference claim resolution process and reduce the number of prolonged and contentious FM translator proceedings. Alternatives considered by the Bureau include retaining the existing process, requiring a greater or lesser number of listener complaints to be submitted with each claim, establishing a greater or lesser contour beyond which listener complaints would not be considered actionable, and alternative forms of technical data, such as field strength tests, to demonstrate resolution of translator interference complaints. The NPRM requests comment on the effect of the proposed rule changes on all affected entities. The Commission is open to consideration of alternatives to the proposals under consideration, including but not limited to alternatives that will minimize the burden on FM broadcasters, many of whom are small businesses.

Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

27. None.

Ex Parte Rules

28. Permit But Disclose. The proceeding this NPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. Memoranda must contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the rules. In proceedings governed by § 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written ex parte

presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Filing Procedures

29. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

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- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

ORDERING CLAUSES

30. **IT IS ORDERED** that, pursuant to the authority contained in § 1.407 of the Commission's rules, 47 CFR 1.407, the Petitions for Rulemaking filed by National Association of Broadcasters and Aztec Capital Partners, Inc. **ARE GRANTED** to the extent specified herein.

31. **IT IS FURTHER ORDERED that**, pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act

of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319, this Notice of Proposed Rulemaking **IS ADOPTED**.

32. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 74

Communications equipment, Education, Radio, Reporting and recordkeeping requirements, Research, Television.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,
Secretary,
Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 74 as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336 and 554.

2. Section 74.1201 is amended by adding paragraph (k) to read as follows:

§ 74.1201 Definitions.

* * * * *

(k) *Listener complaint.* A complaint that is signed by the listener and contains the following information:

- (1) Full name and contact information;
- (2) A clear, concise, and accurate description of the location where the interference is alleged or predicted to occur;
- (3) A statement that the complainant listens to the desired station at least twice a month; and
- (4) A statement that the complainant has no legal, financial, or familial affiliation with the desired station.

3. Section 74.1203 is amended by revising paragraph (a)(3) to read as follows:

§ 74.1203 Interference.

(a) * * *

(3) The direct reception by the public of the off-the-air signals of any full service station or previously authorized secondary station. Interference will be considered to occur whenever reception of a regularly used signal, as demonstrated by six or more listener complaints as defined in § 74.1201(k) and a map plotting specific listener addresses in relation to the relevant station contours, is impaired by the signals radiated by the FM translator or booster station, regardless of

the quality of such reception or the channel on which the protected signal is transmitted; except that no listener complaint will be considered actionable if the alleged interference occurs outside the desired station's 54 dBμ contour.

* * * * *

4. Section 74.1204 is amended by revising paragraph (f) to read as follows:

§ 74.1204 Protection of FM broadcast, FM Translator and LP100 stations.

* * * * *

(f) An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, if grant of the authorization will result in interference to the reception of a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including previously authorized secondary service stations, within the 54 dBμ field strength contour of the desired station, as demonstrated by six or more listener complaints, as defined in § 74.1201(k), as well as a map plotting specific listener addresses in relation to the relevant station contours.

* * * * *

5. Section 74.1233 is amended by revising paragraph (a)(1) to read as follows:

§ 74.1233 Processing FM translator and booster station applications.

(a) * * *

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. For FM translator stations, a major change is:

(i) Any change in frequency (output channel) except:

(A) Changes to first, second or third adjacent channels, or intermediate frequency channels;

or

(B) Upon a showing of interference to or from any other broadcast station, remedial changes to any frequency; or

(ii) Any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area.

(iii) In addition, any change in frequency relocating a station from the non-reserved band to the reserved band, or from the reserved band to the non-reserved band, will be considered major. All other changes will be considered minor. All major changes are subject to the provisions of §§ 73.3580 and 1.1104 of this chapter pertaining to major changes.

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